

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DWAYNE MOTLEY,)	
)	
Plaintiff,)	
)	Case No.:
v.)	
)	
MI-JACK PRODUCTS, INC.,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Mi-Jack Products, Inc. (“Mi-Jack”) hereby removes this action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois. In support of this Notice of Removal, Mi-Jack states as follows:

I. FACTUAL BACKGROUND

1. Plaintiff Derek Motley (“Plaintiff”) filed this action against Mi-Jack in Cook County Circuit Court on or about March 3, 2021, alleging a violation of the federal Family and Medical Leave Act. (29 U.S.C. § 2601). A copy of the Complaint is attached as Exhibit 1.

2. On June 10, 2021, Cook County Deputy Sheriff Savio Gosalves submitted an Affidavit of Service that contained conflicting information. In the Affidavit, Officer Gosalves first affirmed that he had attempted to serve a copy of the Summons and Complaint on Mi-Jack but that service was refused. Officer Gosalves also, however, checked a box on the same Affidavit stating that he had served Mi-Jack by leaving a copy of the Summons and Complaint with “Registered Agent, Authorized Person or Partner of the Defendant Corporation.” A copy of Officer Gosalves’ Affidavit of Service is attached as Exhibit 2.

3. Unbeknownst to Mi-Jack, Plaintiff moved for and obtained a default judgment based on the box that Officer Gosalves checked on his Affidavit of Service. A copy of the default judgment is attached hereto as Exhibit 3.

4. Mi-Jack only learned about the lawsuit after the default judgment was entered. Thereafter, Mi-Jack timely moved to vacate the default judgment on the grounds that Mi-Jack had never properly been served with the Summons and Complaint. In support of its Motion, Mi-Jack submitted the sworn Affidavit of Tammie Marty, a private security officer, who was stationed in a guardhouse outside of Mi-Jack's headquarters when Officer Gosalves attempted to effectuate service of process.

5. Ms. Marty testified in her affidavit that she has never been authorized by Mi-Jack to accept service of process and that she refused to accept service of process from Deputy Sheriff Gosalves on June 9, 2020. Ms. Marty also testified that after she refused to accept service, Officer Gosalves drove away without leaving a copy of the Summons, Complaint or any other documents behind. Copies of the Motion to Vacate and Ms. Marty's supporting Affidavit are attached as Exhibit 4.

6. Plaintiff did not oppose the Motion and on September 28, 2021, an Order was entered vacating the default judgment on the basis that service of process was never properly effectuated and the Court therefore lacked personal jurisdiction to enter the default judgment. Mi-Jack also agreed to accept service of process on September 28, 2021, which is also reflected in the Court Order. A copy of the Order is attached hereto as Exhibit 5.

7. A copy of all other pleadings, orders, and papers filed in the Circuit Court of Cook County are attached hereto as Exhibit 6.

II. BASIS FOR REMOVAL

8. Plaintiff's lawsuit is a civil action in which the United States District Court has federal question jurisdiction under 28 U.S.C. § 1331, as Plaintiff brings this action pursuant to the Family and Medical Leave Act. 29 U.S.C. § 2601.

III. DEFENDANT TIMELY REMOVED THE ACTION

9. Removal of this action is timely in that less than 30 days have passed since the Court vacated the Default Judgment and Mi-Jack accepted service of process. *See* 28 U.S.C. § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 353 (1999) (30-day time period for removal does not start running without effective service of process).

10. Mi-Jack will provide written notice to Plaintiff and will promptly file a notice with the Cook County Circuit Court, in accordance with 28 U.S.C. § 1446(d).

WHEREFORE, Mi-Jack Products, LLC, respectfully requests that this case be removed from the Circuit Court of Cook County into the United States District Court for the Northern District of Illinois for all further matters.

Respectfully submitted,

By: /s/ Kerry E. Saltzman
One of Its Attorneys

Kerry E. Saltzman (ARDC No.: 6191194)
Saltzman@wbs-law.com
Patrick Spellman (ARDC No.: 6327634)
Spellman@wbs-law.com
Williams, Bax & Saltzman, P.C.
221 N. LaSalle St. 37th Floor
Chicago, IL 60601
(312)372-331

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that I served a true and correct copy of Defendant, Mi-Jack Products, Inc.'s Notice of Removal and all other required documents in support thereof via email and U.S. Certified Mail with postage pre-paid and deposited at the mailbox located at 221 N. LaSalle St., Suite 3700, Chicago, Illinois 60601 addressed to the persons listed below on October 7, 2021:

Michael I. Leonard (mleonard@leonardtriallawyers.com)

Frank Swanson (fswanson@leonardtriallawyers.com)

Leonard Trial Lawyers LLC

120 N. LaSalle St., Suite 2000

Chicago, Illinois 60602

/s/ Kerry E. Saltzman